

### **IC 14-27-3**

#### **Chapter 3. Control of Levees**

### **IC 14-27-3-1**

#### **Duties of superintendent of construction**

Sec. 1. (a) The superintendent of construction of the work shall do the following:

- (1) Keep an account of all money collected and paid out by the superintendent in relation to the work.
- (2) Take vouchers for all money paid out.
- (3) Keep an account of time spent on the superintendent's duties. If the superintendent is engaged in at least two (2) works on the same day, the superintendent shall divide the day among the works in proportion to the time devoted to each.
- (4) At least one (1) time every six (6) months, make under oath to the court a full report of all matters relating to the work. The court shall allow the superintendent an amount not exceeding four dollars (\$4) per day for the time actually and necessarily spent by the superintendent on the work.

(b) The superintendent is under the direction of the court. If the superintendent fails to obey the orders of the court, the superintendent:

- (1) forfeits all compensation due the superintendent;
- (2) shall be treated summarily as for contempt; and
- (3) may be removed by the court.

(c) An action may also be brought upon the superintendent's bond, in the name of the state of Indiana, for a failure of duty, and the amount recovered shall be applied to payment of the expenses of the construction.

(d) The court may at any time discharge the superintendent and appoint another superintendent.

*As added by P.L.1-1995, SEC.20.*

### **IC 14-27-3-2**

#### **Laborer's and materialman's liens**

Sec. 2. (a) All laborers and other persons who perform a service or furnish materials in the construction of the work under this chapter have a lien upon the fund raised for the construction of the work. Upon notice in writing filed with the county treasurer of the amount due and what the amount is for, the treasurer shall withhold payment to the contractor on any warrant drawn in the contractor's favor in an amount sufficient to satisfy the lien, until the amount is adjusted.

(b) If the contractor and the person claiming the lien disagree on the amount or validity of the lien, the court shall, on motion of the superintendent, contractor, or person claiming the lien, determine the matter.

(c) On failure to comply with this section, the superintendent is liable on the superintendent's bond for any amount improperly paid over to the contractor.

*As added by P.L.1-1995, SEC.20.*

### **IC 14-27-3-3**

#### **Pro rata distribution of excess money**

Sec. 3. If money remains after the payment of the cost of the construction of the work and expenses connected with the work, the money shall be distributed, pro rata, according to the amount paid by the owners of the land and the corporations assessed for the work.

*As added by P.L.1-1995, SEC.20.*

### **IC 14-27-3-4**

#### **Assessments; defect in proceedings not defeating collection**

Sec. 4. The collection of assessments is not defeated by reason of a defect in the proceeding occurring before the judgment of the court approving and confirming the assessment of benefits and damages and ordering the work established if the court had jurisdiction. The judgment is conclusive that all prior proceedings were regular and according to law. A person may not, at any stage of the proceedings, take advantage of an error, a defect, or an informality that does not directly affect the person. If the court releases a person of liability or modifies the person's assessment, the act of the court does not affect the rights or liabilities of any other person.

*As added by P.L.1-1995, SEC.20.*

### **IC 14-27-3-5**

#### **Assessments; petition for additional assessments**

Sec. 5. (a) If it appears that the assessment of benefits is insufficient to complete the work and pay expenses in connection with the work, the superintendent of construction may file a petition asking the court for an additional assessment. Five (5) days notice of the filing of the petition shall be given to each person assessed for the work or to the attorney of record of the person. The notice shall be given and served in the same manner as the notice of filing of the original petition.

(b) On or before the expiration of the five (5) days notice, an interested person may file an answer or objection to the petition.

(c) The court may:

(1) after:

(A) the expiration of the time; or

(B) hearing the answer or objection if an answer or objection is filed; and

(2) if satisfied of the necessity;

make an additional assessment on all land originally assessed as benefited and in proportion to the original assessment. The additional assessments, or as much of the additional assessments that are necessary, are first liens upon the land against which the additional assessments are assessed and shall be collected as provided for the original assessments.

*As added by P.L.1-1995, SEC.20.*

### **IC 14-27-3-6**

#### **Assessments; supplemental petitions**

Sec. 6. (a) The superintendent of construction or a person interested in the work may also file with the court a supplemental petition showing that land not assessed for benefits or damages is affected by the work whether or not the land is described in the petition or in either report of the commissioners. Notice of the supplemental petition shall be given as provided for filing the original petition.

(b) The court shall refer the supplemental petition to the commissioners to report on the supplemental petition. All proceedings may be had and orders and decrees made, including the construction of additional arms or branches, as if the supplemental petition were an original petition. However, the proceedings on the supplemental petition do not affect the original petition unless the court, for good cause, orders the petitions consolidated. An order to consolidate the petitions, however, may not delay the original work.  
*As added by P.L.1-1995, SEC.20.*

#### **IC 14-27-3-7**

##### **Repairs to levees; records; warrants**

Sec. 7. (a) The committee placed in charge of the levee may make all necessary repairs to the levee that are necessary to keep the levee in original condition. If it becomes necessary for the safety of the levee to change the line and location of the levee at any point in making the repairs, the committee may make the change. However, the committee may not change or relocate the general line or location of the levee.

(b) The committee shall do the following:

- (1) Keep a record of the committee's proceedings.
- (2) Note in the record all expenses incurred in making the repairs.
- (3) File with the county auditor a statement showing the cost and expenses of making the repairs, specifying the amounts due each person.

(c) The auditor shall draw a warrant on the county treasurer in favor of each person for the amount due the person. The amounts shall be paid out of the county revenue but reimbursed to the county.  
*As added by P.L.1-1995, SEC.20.*

#### **IC 14-27-3-8**

##### **Apportionment and assessment of costs of repairs**

Sec. 8. To raise the necessary money to reimburse the county, the committee shall apportion and assess the costs upon the land and corporations to be benefited by the repairs in proportion to the benefits. The costs may not exceed the benefits. However, if the repairs have been made necessary by the act or negligence of:

- (1) the owner or occupant of land; or
- (2) an employee or agent of the owner or occupant;

the cost of the repairs shall be assessed against that land alone.

*As added by P.L.1-1995, SEC.20.*

### **IC 14-27-3-9**

#### **Notice of assessments**

Sec. 9. (a) The committee shall, within five (5) days after making an assessment, post written notices as follows:

- (1) In three (3) public places in the township where the land assessed is situated, near to the work done.
- (2) One (1) at the door of the courthouse of each county in which the land is situated.

(b) The committee shall note in the record in the committee's office the time and place of posting of each notice.

*As added by P.L.1-1995, SEC.20.*

### **IC 14-27-3-10**

#### **Appeal of assessment; bond; summons; pleadings**

Sec. 10. (a) A person assessed may appeal the assessment to the circuit or superior court of the county in which the proceedings for the construction of the work were held by filing with the clerk of the court, within ten (10) days after the date of posting the notices, an appeal bond:

- (1) payable to the committee in the amount of two (2) times the assessment;
- (2) with surety to the approval of the clerk; and
- (3) conditioned that the person will prosecute the appeal and pay all costs that are adjudged against the person.

(b) The clerk shall issue a summons for the committee served by the sheriff.

(c) The committee shall file with the clerk the following:

- (1) A copy of the record of the assessment for the repairs.
- (2) The notice of the assessment.
- (3) A statement showing when and where the notices were posted.

(d) Other pleadings are not necessary.

*As added by P.L.1-1995, SEC.20.*

### **IC 14-27-3-11**

#### **Appeal of assessment; proceedings**

Sec. 11. (a) The appeal shall be tried by the court without a jury. A change of venue from the judge but not from the county is allowed. The only questions tried are the following:

- (1) Whether the repairs are necessary.
- (2) What is the cost of the repairs.
- (3) Whether the appellant's land is benefited by the repairs.
- (4) If the appellant's land is benefited, what part of the costs should be assessed against the land of the appellant.

(b) The decision of the court may not be appealed.

*As added by P.L.1-1995, SEC.20.*

### **IC 14-27-3-12**

#### **Appeal of assessment; costs**

Sec. 12. (a) If the court reduces the assessment against the land of

the appellant at least twenty percent (20%), all the costs of the appeal shall be added to the assessment and shall be assessed upon the tracts of land in the same proportion as the original assessment.

(b) If the court does not reduce the assessment of the appellant at least twenty percent (20%), the appellant must pay all costs of the appeal.

(c) If more than one (1) person appeals, the cases shall be consolidated and tried together and the costs apportioned as justice requires.

*As added by P.L.1-1995, SEC.20.*

#### **IC 14-27-3-13**

##### **Assessments; certified copy; placement on tax duplicate; applicability of statutes**

Sec. 13. (a) The:

- (1) clerk of the court, when an appeal is disposed of; or
- (2) committee, if an appeal is not taken;

shall make a certified copy of the assessment as confirmed by the court in an appeal or as made originally if an appeal is not taken. The clerk or committee shall file the certified copy with the auditor of the county in which the proceedings are held.

(b) The auditor shall place the assessments against each tract of land upon the next succeeding tax duplicate. The assessment is a lien from the time of posting the original notices of the assessments and shall be collected as other state and county taxes are collected.

(c) All statutes regulating:

- (1) the payment and collection of state and county taxes;
- (2) the assessment of penalties and interest; and
- (3) the sale of property for delinquent taxes;

apply to the payment and collection of assessments that are placed upon the tax duplicates under this section.

*As added by P.L.1-1995, SEC.20.*

#### **IC 14-27-3-14**

##### **Preservation and protection of levee**

Sec. 14. (a) The committee in charge of a levee may preserve and protect the levee, including a strip of land ten (10) feet in width on the inside of the levee.

(b) If the committee determines that the preservation of the levee or a part of the levee requires that the levee should be fenced, the committee may have suitable fences erected along the levee.

(c) The committee may also do the following:

- (1) Adopt the means necessary to keep the levee free from sprouts, grass, weeds, briars, and other growth.
- (2) Sow grass seed on the levee.
- (3) Use the means necessary to protect the levee from varmints or burrowing animals.

*As added by P.L.1-1995, SEC.20.*

#### **IC 14-27-3-15**

**Additions to or protection of levee upon petition of landowners**

Sec. 15. If requested by a petition signed by a majority of the owners of land protected by the levee, the committee in charge of a levee may do the following:

- (1) Make additions to the levee by increasing the height or width of the levee.
- (2) Protect against the encroachment of a stream and take all necessary steps to protect and prevent the washing and cutting away of the banks of the stream by the construction of a suitable work that will prevent the washing or cutting of the banks.

*As added by P.L.1-1995, SEC.20.*

**IC 14-27-3-16****Pumping or removal of water upon petition of landowners**

Sec. 16. If requested in writing by a majority of interested landowners, the committee in charge of a levee may pump out or remove from land protected by the levee water that collects and remains standing on the land and that does not have a means of outlet. For this purpose the committee may purchase pumps or adopt other suitable means for the removal of the water.

*As added by P.L.1-1995, SEC.20.*

**IC 14-27-3-17****Applicability of statutes regarding assessments**

Sec. 17. All of the provisions of sections 7 through 13 of this chapter concerning:

- (1) the payment of the cost of repairs of levees;
- (2) the making of assessments for the cost;
- (3) the right of appeal from the assessments; and
- (4) the manner of collecting the assessments;

apply to work done under sections 14, 15, and 16 of this chapter.

*As added by P.L.1-1995, SEC.20.*

**IC 14-27-3-18****Minimum annual assessment**

Sec. 18. Notwithstanding the percent of benefit assessment determined by a levee committee under Acts 1907, c.223, s.8 1/2, as added by Acts 1941, c.159, s.1, as amended, and as preserved from repeal under certain circumstances by section 19 of this chapter, the minimum annual amount to be imposed for levee purposes upon a tract of land benefited by the levee may not be less than five dollars (\$5).

*As added by P.L.1-1995, SEC.20.*

**IC 14-27-3-19****Effect of recodification**

Sec. 19. A levee district or association that was created under a statute that was repealed by IC 19-3-2-106 (recodified as IC 13-2-19.5-9 before its repeal, and later recodified as this section):

- (1) is not affected by the repeal; and

(2) may continue to exist as if the statute had not been repealed.  
*As added by P.L.1-1995, SEC.20.*